Supreme Court, U. S.
FILED
MAR 30 1979
MICHAEL RODAK, JR., CLERK

No. 78-1272

In the Supreme Court of the United States

OCTOBER TERM, 1978

ROGER NOALL, ETC., PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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Petitioner seeks review of the decision below enforcing an Internal Revenue summons requiring him to produce audit reports of a corporation he serves as an officer. Since petitioner has complied with the summons, the case is moot and certiorari should be denied.

The pertinent facts showing that the case is moot are as follows: On November 22, 1977, Revenue Agent Felix Karul of the Internal Revenue Service issued and served on petitioner, as Executive Vice-President of Bunge Corporation, an Internal Revenue summons. The summons directed him to produce all of the internal audit reports and related work papers pertaining to Bunge Corporation's federal income tax liabilities for the fiscal years ending March 31, 1972, March 31, 1973, and March 31, 1974 (A. 20).[1] Following petitioner's refusal to comply

[1] "A" refers to the joint appendix filed in the court of appeals.

with the summons (A. 15, 30), the government commenced this enforcement proceeding in the United States District Court for the Southern District of New York (A. 13). The district court ordered the summons enforced (A. 129-131; see also Pet. App. 8a-9a). The court of appeals affirmed (Pet. App. 1a-7a).

Following the decision of the court of appeals, petitioner moved the court of appeals, and subsequently, the district court, for a stay of enforcement of the summons pending certiorari. Both courts denied petitioner's requests for a stay. On February 6, 1979, the district court further ordered that unless petitioner obeyed the summons on or before February 13, 1979, he would be held in civil contempt. On February 12, 1979, Mr. Justice Marshall denied petitioner's application for a stay of enforcement of the summons pending certiorari (No. A-718). We are advised by both counsel for petitioner and Revenue Agent Karul that petitioner thereafter fully complied with the summons.

Since petitioner has complied with the summons by producing the internal audit reports and related work papers, the case is moot. *Barney* v. *United States*, 568 F. 2d 116 (8th Cir. 1978); *United States* v. *Hankins*, 565 F. 2d 1344 (5th Cir. 1978), cert. denied, No. 78-806 (Feb. 21, 1979); *Kurshan* v. *Riley*, 484 F. 2d 952, 953 (4th Cir. 1973); *United States* v. *Lyons*, 442 F. 2d 1144 (1st Cir. 1971).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

MARCH 1979